

Service Date: November 30, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the Application of a)	UTILITY DIVISION
CCCMT, Inc. dba Connect!)	
and Qwest Corporation, f/k/a U S WEST)	DOCKET NO. D2000.8.126
Communications, Inc. Pursuant to Section 252(e))	ORDER NO. 6294
of the Telecommunications Act of 1996 for)	
Approval of their Interconnection Agreement)	

FINAL ORDER APPROVING INTERCONNECTION AGREEMENT

I. Introduction and Procedural Background

On February 8, 1996, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act) was signed into law, ushering in a sweeping reform of the telecommunications industry that is intended to bring competition to the local exchange telecommunications market. The 1996 Act requires companies like Qwest Corporation (Qwest) to negotiate agreements with new competitive entrants in their local exchange markets. 47 U.S.C. . . 251(c) and 252(a).

Qwest and CCCMT, Inc. d/b/a Connect! (Connect) negotiated an interconnection contract after Connect requested contract negotiations. The agreement is entitled "Negotiated/Arbitrated Agreement for Interconnection, Resale and Unbundled Elements" (Agreement).

Connect submitted the interconnection agreement to the Montana Public Service Commission (Commission) for approval on August 21, 2000. The parties' Agreement was reached through voluntary negotiations and requires Commission approval prior to implementation pursuant to 47 U.S.C. . 252(e). The Commission must approve or reject the Agreement no later than November 19, 2000, 90 days following the request for approval, or it will be deemed approved. 47 U.S.C. . 252(e)(4).

On August 30, 2000, the Commission issued a Notice of Application and Notice of Opportunity to intervene and comment. The notice established September 14, 2000 as the deadline for intervention and limited intervenors to addressing the grounds for Commission action identified in Section 252(e)(2)(A) of the Act. The Notice stated that no public hearing was

contemplated by the Commission unless requested by an interested party by September 14, 2000. The Notice further stated that comments were required to be filed no later than September 25, 2000.

The Notice published by the Commission in this proceeding advised interested parties in the geographic areas affected by the Agreement that intervention in the proceeding was limited and that Montana Consumer Counsel (MCC), the only permitted intervenor, could be contacted to represent consumer interests. The MCC neither requested intervention nor filed comments.

Upon review of the Agreement, the Commission makes the following findings, conclusions and order.

II. Applicable Law and Commission Decision

1 The Interconnection Agreement between Qwest and Connect provides for, *inter alia*: interconnection by means of collocation, entrance facilities or meet point arrangements; the exchange of traffic between Qwest and Connect; compensation for transport and termination of such traffic; the use of interim and permanent Number Portability; the purchase of Qwest's retail services for resale; the acquisition of unbundled network elements from Qwest; Connect customer access to operator assistance, Directory Assistance and E911 service; access to poles, conduits and rights-of-way; access to operational support systems and myriad other arrangements necessary for Connect's provision of competitive local exchange services.

2 The Commission must approve or reject the parties' agreement, with written findings as to any deficiencies, no later than November 19, 2000. 47 U.S.C. . 252(e)(1) and (4). Section 252(e)(2)(A) limits the grounds for rejection of an agreement reached by voluntary negotiation:

(2) GROUNDS FOR REJECTION - The State commission may only reject--

- (A) an agreement (or any portion thereof) adopted by negotiation under [47 U.S.C. . 252(A)] if it finds that:
 - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

3 Notwithstanding the limited grounds for rejection in 47 U.S.C. . 252(e)(2)(A), the state commission's authority is preserved in . 252(e)(3) to establish or enforce other requirements of state law in its review of arbitrated or negotiated agreements, including requiring compliance with state telecommunications service quality standards or requirements. Such compliance is subject to . 253 of the 1996 Act which does not permit states to permit or impose any statutes, regulations, or legal requirements that prohibit or have the effect of prohibiting market entry.

4 Unlike an agreement reached by arbitration, a voluntarily negotiated agreement need not comply with standards set forth in Section 251(b) and (c). Significantly, standards set forth in . 251(c) and which this agreement may have been negotiated "without regard to" include the following:

(c) **ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS.** --In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

- (2) **INTERCONNECTION.**--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
 - (A) for the transmission and routing of telephone exchange service and exchange access;
 - (B) at any technically feasible point within the carriers' network;
 - (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate or any other party to which the carrier provides interconnection; and
 - (D) on rates, terms and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

47 U.S.C. . 251(c). This section and . 252(a)(1) of the Act permit parties to agree to rates, terms and conditions for interconnection that may not be deemed just, reasonable and nondiscriminatory, and which are not determined according to the pricing standards included in . 252(c) of the Act, as would be required in the case of arbitrated rates set by the Commission. By approving the Agreement, the Commission does not intend to imply that it approves of all the terms and conditions included in the Agreement and makes no findings herein on the

appropriateness of many of the terms and conditions. Our interpretation of the 1996 Act is that . . . 252(a) and (c) prevent the Commission from addressing such issues in this proceeding.

5. This Agreement is an "opt-in" to the Agreement between U S WEST (Qwest) and Sprint Communications which was approved/rejected in Order Nos. 6030 and 6030a, Docket No. D97.8.160. "Opt-in" means that the parties agree to provisions identical to those in another agreement.

III. Conclusions of Law

1 The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Qwest is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA. Connect is a provider of regulated interexchange telecommunications services in the State of Montana, and will also be regulated when it begins offering local exchange service in Montana as a competitive local exchange carrier. Section 69-3-803(6), MCA. Connect is required to comply with § 69-3-805, MCA. Compliance with § 69-3-805(1)(e), MCA, has been waived by the Commission.

2 The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3 The Commission has jurisdiction to approve the Interconnection Agreement negotiated by the parties and submitted to the Commission for approval according to Section 252(e)(2)(A). Section 69-3-103, MCA.

4 The United States Congress enacted the Telecommunications Act of 1996 to encourage competition in the telecommunications industry. Congress gave responsibility for much of the implementation of the 1996 Act to the states, to be handled by the state agency with regulatory control over telecommunications carriers. *See generally*, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (*amending* scattered sections of the Communications Act of 1934, 47 U.S.C. . 151, *et seq.*). The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

5. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

6. Approval of interconnection agreements by the Commission is subject to the requirements of federal law as set forth in 47 U.S.C. . 252. Section 252(e) limits the Commission's review of a negotiated agreement to the standards set forth therein for rejection of such agreements. Section 252(e)(4) requires the Commission to approve or reject the Qwest/Connect Agreement by November 19, 2000, or the Agreement will be deemed approved.

IV. Order

THEREFORE, based upon the foregoing, it is ORDERED that the interconnection Agreement between Qwest Corporation and CCCMT, Inc. d/b/a Connect! is approved, consistent with Order Nos. 6030 and 6030a, Docket No. D97.8.160. To the extent there are provisions in this Agreement that were rejected in the U S WEST/Sprint agreement, Docket No. D97.8.160, those provisions are similarly rejected in this Agreement. If any amendments to the Agreement need to be filed consistent with this order, they should be filed within 30 days. Parties must file all subsequent amendments to the Agreement with the Commission for approval pursuant to the 1996 Act.

DONE AND DATED this 21st day of November, 2000, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.